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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/736,533	12/13/2000	Judith N. Narthey	33793US	8271

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EXAMINER

KRUER, KEVIN R

ART UNIT	PAPER NUMBER
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1773

DATE MAILED: 04/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

09/736,533

Examiner

Kevin R Kruer

Applicant(s)

NARTEY ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on February 6, 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,8-10,12-14,17-20 and 22-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8-10,12-14,17-20 and 22-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

1. Claims 1, 3-6, 8-10, 12-14, 16-20, and 22-24 are rejected under 35 U.S.C. 102(e) as being by Ciocca et al (US 6,517,936 B1). Ciocca teaches a heat-sealable stretch film comprising a first outer heat-sealing layer, a second outer layer and at least an intermediate layer (abstract). The first outer heat-sealable layer comprises a TPE-S (abstract). TPE-S refers to TPE based on styrene block copolymers such as styrene-butadiene-styrene, styrene-ethylene/butene-styrene, and styrene-isoprene-styrene (col 3, lines 10+). The intermediate layer may comprise plasticized PVDC (polyvinylidene chloride) to impart the film with the desired gas barrier properties (col 5, lines 57+). The second outer layer may comprise low-density polyethylene (col 4, lines 63+), such as

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linear low-density polyethylene (col 3, lines 41+). The laminate may further comprise tie layers may be utilized between the PVDC intermediate layers and the outer layers (col 5, lines 53+). The tie layer may comprise any resin that obtains a sufficient bond between the various layers of the structure (col 5, lines 48+). Such resins include ethylene-vinyl acetate and anhydride modified ethylene-alpha olefin copolymers (col 5, lines 53+). The film may be manufactured by co-extrusion or extrusion coating (col 6, lines 28+).

NOTE: the examiner takes the position that Ciocca anticipates the claimed invention because the Markush group for the second outer layer is small enough (5 members) that one of ordinary skill in the art would have immediately envisioned each embodiment. Furthermore, the examiner takes the position that the low density polyethylene taught in Ciocca inherently "functions as a sealing layer capable of adhering to various materials by heat or pressure according to the usage of said multi-layer laminate" because said LDPE layer comprises the same composition as applicant's claimed invention.

Furthermore, the limitation "said film layer C is the inner layer of the multi-layer laminate" does not distinguish the claimed laminate from the laminate taught in Ciocca because both films comprise the same three layers laminated in the same order. The limitation "inner layer" does not further limit the laminate structure in any way.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-6, 8-10, 12-14, 16-20, and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ciocca et al (US 6,517,936 B1) in view of Dobreski (US 4,430,457). Ciocca teaches a heat-sealable stretch film comprising a first outer heat-sealing layer, a second outer layer and at least an intermediate layer (abstract). The first outer heat-sealable layer comprises a TPE-S (abstract). TPE-S refers to TPE based on styrene block copolymers such as styrene-butadiene-styrene, styrene-ethylene/butene-styrene, and styrene-isoprene-styrene (col 3, lines 10+). The intermediate layer may comprise plasticized PVDC (polyvinylidene chloride) to impart the film with the desired gas barrier properties (col 5, lines 57+). The second outer layer may comprise low-density polyethylene (col 4, lines 63+), such as linear low-density polyethylene (col 3, lines 41+). The laminate may further comprise tie layers may be utilized between the PVDC intermediate layers and the outer layers (col 5, lines (col 5, lines 53+). The tie layer may comprise any resin that obtains a sufficient bond between the various layers of the structure (col 5, lines 48+). Such resins include ethylene-vinyl acetate and anhydride modified ethylene-alpha olefin copolymers (col 5, lines 53+). The film may be manufactured by co-extrusion or extrusion coating (col 6, lines 28+).

NOTE: the examiner takes the position that Ciocca anticipates the claimed invention because the Markush group for the second outer layer is small enough (5 members) that one of ordinary skill in the art would have immediately envisioned each embodiment. Furthermore, the examiner takes the position that the low density

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polyethylene taught in Ciocca inherently "functions as a sealing layer capable of adhering to various materials by heat or pressure according to the usage of said multi-layer laminate" because said LDPE layer comprises the same composition as applicant's claimed invention.

Furthermore, the limitation "said film layer C is the inner layer of the multi-layer laminate" does not distinguish the claimed laminate from the laminate taught in Ciocca because both films comprise the same three layers laminated in the same order. The limitation "inner layer" does not further limit the laminate structure in any way.

In arguendo, if one of ordinary skill in the art would not have immediately envisioned the use of LLDPE as the second outer layer of the laminate taught in Ciocca, the examiner takes the position that it would have been obvious to one of ordinary skill in the art to utilize LLDPE as the second outer layer because Dobreski teaches that LLDPE provides excellent elongation, tear resistance, tensile strength, and puncture resistance-all of which are desirable in cling/stretch films (col 2, lines 18+).

3. Claims 1, 3-6, 8-10, 12-14, 16-20, and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ciocca et al (US 6,517,936 B1) in view of Schirmer (US 4,847,148) or Newman Jr. et al (US 3,645,838). Ciocca teaches a heat-sealable stretch film comprising a first outer heat-sealing layer, a second outer layer and at least an intermediate layer (abstract). The first outer heat-sealable layer comprises a TPE-S (abstract). TPE-S refers to TPE based on styrene block copolymers such as styrene-butadiene-styrene, styrene-ethylene/butene-styrene, and styrene-isoprene-styrene (col 3, lines 10+). The intermediate layer may comprise plasticized PVDC (polyvinylidene

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chloride) to impart the film with the desired gas barrier properties (col 5, lines 57+). The second outer layer may comprise low-density polyethylene (col 4, lines 63+), such as linear low-density polyethylene (col 3, lines 41+). The laminate may further comprise tie layers may be utilized between the PVDC intermediate layers and the outer layers (col 5, lines (col 5, lines 53+). The tie layer may comprise any resin that obtains a sufficient bond between the various layers of the structure (col 5, lines 48+). Such resins include ethylene-vinyl acetate and anhydride modified ethylene-alpha olefin copolymers (col 5, lines 53+). The film may be manufactured by co-extrusion or extrusion coating (col 6, lines 28+).

NOTE: the examiner takes the position that Ciocca anticipates the claimed invention because the Markush group for the second outer layer is small enough (5 members) that one of ordinary skill in the art would have immediately envisioned each embodiment. Furthermore, the examiner takes the position that the low density polyethylene taught in Ciocca inherently "functions as a sealing layer capable of adhering to various materials by heat or pressure according to the usage of said multi-layer laminate" because said LDPE layer comprises the same composition as applicant's claimed invention.

Furthermore, the limitation "said film layer C is the inner layer of the multi-layer laminate" does not distinguish the claimed laminate from the laminate taught in Ciocca because both films comprise the same three layers laminated in the same order. The limitation "inner layer" does not further limit the laminate structure in any way.

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In arguendo, if Ciocca does not anticipate the use of the claimed tie layer compositions, the examiner takes the position that Schirmer and Newman would have rendered said tie layer compositions obvious. Both Schirmer and Newman teach a PVDC film adhesively attached to a styrene-based substrate (see abstracts). Schirmer teaches that ethylene vinyl acetate may be utilized as the adhesive (col 4, lines 4+). Newman teaches that ethylene vinyl acetate copolymers may be utilized to adhere PVDC to styrene-based substrates. Thus, it would have been obvious to one of ordinary skill in the art to utilize ethylene vinyl acetate as the tie layer of the laminate taught in Ciocca because Schirmer and Newman each teach that EVA may be utilized as an adhesive between PVDC and styrene-based elastomers.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 3-6, 8-10, 12-14, 16-20, and 22-24 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R Kruer whose telephone number is 703-305-0025. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau can be reached on 703-308-2367. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-5408 for regular communications and 703-305-3599 for After Final communications.



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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

*K-RK-*

krk

April 16, 2003

*Paul Thibodeau*

Paul Thibodeau  
Supervisory Patent Examiner  
Technology Center 1700